RECEIVED
CENTRAL FAX CENTER

DEC 17 2004

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICANTS	:	GERS-BARLAG et al.
SERIAL NO.	:	**09/744,642**
FILED	:	26 January 2001
FOR	:	EMULSIFIER-FREE FINELY DISPERSED SYSTEMS
ART UNIT	:	**1617**
EXAMINER	:	**Gina C. Yu**

17 December 2004

Mail Stop: Office of Petitions
Hon. Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION PURSUANT TO 37 CFR § 1.137(b)

SIR:

Petitioner respectfully requests that the Honorable Commissioner exercise his power and restore the above-identified application to pending status, the application having been unintentionally abandoned.

Introduction

According to 37 CFR § 1.137(b), which set forth the requirements for restoring an unintentionally abandoned application to pending status:

"A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action, unless previously filed;

(2) The petition fee as set forth in § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional...; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section."

(1) The Reply

With respect to requirement (1), this application was unintentionally abandoned by failure to file an Appeal Brief within six months of the filing of the Notice of Appeal. The applicants request that the Notice of Appeal be rescinded, however, if this is not possible, the applicants have also concurrently filed a request for continued examination (RCE) which includes a repeat of the applicants response from 9 October 2003 (and a summary of the telephone conversation with the Examiner's supervisor Sreeni Padmanabhan on 2 December 2004) and also includes a terminal disclaimer to overcome the obviousness-type double patenting rejection over U.S. Patent 6,592,883.

(2) The Petition Fee

Regarding requirement (2), the Commissioner is also authorized to charge the fee set forth in § 1.17(m), and any other fees deemed necessary for consideration and/or grant of this petition, to Deposit Account No. 14-1263.

(3) The Statement that the Delay Was Unintentional

Regarding requirement (3), the undersigned hereby states that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional.

The Notice of Appeal entered on 12 December 2003 was filed inadvertently by the applicants for this application. As the Examiner's rejection of 13 August 2003 was non-final, the applicants did not intend to appeal the rejection until a response to the applicants' communicaton of 9 October 2003 was made (to date, no response to this communication has been received). As it was believed that the next response due was from the Examiner, no Appeal Brief was ever filed by the applicants as it was believed that this was not necessary.

Attached to this petition is a miscellaneous communication requesting that the Notice of Appeal be rescinded.

(4) The Need for a Terminal Disclaimer

Regarding requirement (4), petitioners submit that a terminal disclaimer is not required. By the terms of 37 CFR §1.137(c), a terminal disclaimer must accompany a petition of this type, "[i]n a design application, a utility application filed before June 8, 1995, or a plant application filed before June 8, 1995." Since the instant application does not fall into any of these categories, Petitioners submit that a terminal disclaimer is not required.

Closing

In view of the foregoing, Petitioners submit that all of the requirements of a grantable petition have been met. Accordingly, Petitioners respectfully request that the Honorable Commissioner exercise his power and restore this application to pending status.

Early and favorable action is earnestly solicited.

Respectfully submitted,

NORRIS MCLAUGHLIN & MARCUS, P.A.

By Howard C. Lee

Howard C. Lee
Reg. No. 48,104

875 Third Ave., 18th Floor
New York, New York 10022
(212) 808-0700

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that the foregoing Petition to Revive Unintentionally Abandoned Application is being facsimile transmitted to: Hon. Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the date indicated below:

Date: 17 December 2004

By Agata Glinska

AgataGlinska